

Marion County Study of Alternative Sentences for Impaired Drivers

Final Report

Background

According to Mothers Against Drunk Driving (MADD) statistics², approximately 21% of all drivers involved in fatal crashes were intoxicated at the time of their crash. Also, “One in 100 drivers had a Blood Alcohol Content (BAC) of .10 or greater. About 16 billion miles were driven drunk.” Alcohol-related crashes, a consequence of so many drunk driving miles, cost the nation \$45 billion—with \$7 billion alone going to treat the resulting injuries.³ Nor is the cost of societies’ legal response to drunk driving small.

MADD also asserts that figures derived from the FBI verify “Arrests for DUI/DWI accounted for one of the highest (1.4 million) arrest counts among specific categories in 1994.”⁴ Moreover, even with a two-percent decline in the U.S. crime rate, “...the number of arrests for driving under the influence increased from 1.2 million in 1993 to 1.4 million in 1994.”⁵ Drinking drivers have long been recognized as one of the leading causes of fatal crashes in the nation. With the obvious high costs associated with the problem, the importance of dealing with this phenomenon could scarcely be overstated. This is no less true in Indiana and Marion County than in the rest of the country—and was so recognized by the staff of the Prosecutor’s Office.

In Indiana in 1993, there were 10,137 alcohol crashes with 228 alcohol fatalities while in 1994 there were 10,128 alcohol crashes resulting in 229 alcohol fatalities.⁶ Of these, Marion County experienced 1,399 alcohol-related crashes and 15 associated fatalities in 1993 with 1,455 alcohol-related crashes and 12 fatalities for 1994. During the same period, affidavits of probable cause (APC) were filed against 37,123 suspected drunk drivers in Indiana in 1993 with 34,562 filed in 1994 for similar reasons. Marion County was responsible for no less than 4,718 (13%) of those filings in 1993 and 5,357 (16%) in 1994.⁷

In 1994, the Marion County Prosecutor’s Office (MCPO) focused intently on the problem of drinking and driving. Marion County is the most densely populated county in Indiana and the home of Indianapolis—the State Capital of Indiana and the largest city in the State. Indianapolis is a rapidly growing city, but with its increase in size also came an increase in the workload of the Prosecutor’s Office. This office has the responsibility of prosecuting all law violations within the city and county that includes operating a vehicle while intoxicated (OWI).

In 1993, of the more than 5,000 filings for OWI in Marion County Superior Courts, 1,634 were “D” felony charges against persons for operating a vehicle while intoxicated. By 1994, MCPO concluded that the number of OWI offenses would grow rather than diminish.

² MADD Statistics, General Statistics, (http://www.madd.org/stats/stat_gen.shtml), 11/4/99.

³ *Ibid.*

⁴ MADD Statistics, DUI/DWI Arrests and Convictions, (http://www.madd.org/stats/stat_oui.shtml), 11/2/99.

⁵ *Ibid.*

⁶ Governor’s Council on Impaired & Dangerous Driving, *Alcohol Crash Facts, Indiana 1994*. West Lafayette, IN. Purdue University, 1995, p. 6.

⁷ *Ibid.*, pp. 29, 36, 37.

For the Marion County Prosecutor's Office, not only was the budget limited, but by 1994, the budget had not changed appreciably for five years. While the budget was not changing, the problems associated with a growing community were. Such was the case of OWI cases in Marion County.

Of all the driving cases that a prosecutor's office must handle, OWI represents the greatest danger to the public, and is expensive to prosecute. The cost is readily seen in the normal course of such a prosecution. The process frequently requires many hearings, conferences, pre-trial motions filed in court, and, in some cases, lengthy trials. The manpower hours required for this effort clearly incur a substantial burden on the operating budget of the prosecutor's office. The risk to the public, however, is among the greatest concerns.

As previously noted, of the OWI cases filed in Marion County in 1993, 1,634 were D Felony cases. Felony filings of OWI charges were taken to court when the accused had a prior OWI conviction within the past 5 years or the accused had caused a crash while intoxicated resulting in a serious bodily injury or death. Of these cases, according to Ms. Donna Lush, Administrator, MCPO,⁸ felony charges were filed against persons causing accidents with injury approximately five times every year while the remainder of felony filings were due to prior convictions. The overwhelming majority of these cases, therefore, were repeat offenders representing nearly 30% of those charged with OWI in Marion County in 1993. As a result, in nearly one-third of the cases, the cost to prosecute was destined to be borne again. More importantly, this also meant that nearly one-third of these dangerous drivers would probably continue to drive while intoxicated until they were either caught and prosecuted again and/or crashed their vehicles while drunk. It was clear to the Marion County Prosecutor's Office that while the problem of intoxicated drivers would not be resolved easily, targeting recidivism (repeat offenders) would be a worthwhile approach to combating the problem.

In constructing a strategy to combat this problem, the high number of felony filings caused by repeat offenders imposed a sense of urgency. It was clear from this trend that sentences that had been applied were relatively ineffective in deterring OWI. As the Prosecutor's Office staff observed, ". . . the danger to public safety is the most important reason for reducing the incidence of impaired driving . . .," but ". . . the only relief for high caseloads and overcrowded dockets is to reduce the number of cases."⁹ Having faced these issues, the Marion County Prosecutor's Office took the next step.

After considerable effort beginning as far back as 1993 but reaching fruition during 1994 and 1995, the Prosecutor's Office constructed a plan and sought funding to put a recidivism study into operation. As a result, the Governor's Council on Impaired and Dangerous Driving funded a grant for the Marion County Prosecutor's Office to conduct a "*Study of Alternative Sentences for Impaired Drivers*." The study, beginning August 1, 1995, was given funding for a five-year project that would study the deterrent effects of a variety of penalties imposed on persons convicted of OWI for the first time. The program was intended to evaluate the current process of handling OWI cases, and to determine what sentences were most effective. Within the scope of this study, carefully constructed programs would be made part of the sentence of convicted first-time OWI offenders.

⁸ Lush, Donna, Administrator, MCPO. Interview with ATC, October, 28, 1999.

⁹ Application for Grant Award submitted to the Indiana Governor's Council on Impaired and Dangerous Driving by the Marion County Prosecutor's Office, August 30, 1995, (hereafter cited as "MCPO Grant Application").

Program Structure

The plan, as approved for funding, called for careful screening of offenders charged with OWI in Superior Court 10 of Marion County during a period of one year—August 1995 to August 1996. Qualified persons were assigned to one of six treatment groups, or modalities, as part of the sentence conditions resulting from their guilty verdict. The groups included a control group which incurred a sentence of 365 days of probation, a 30-day license suspension with an additional 180 days of restriction, a \$200.00 counter-measure fee, and a requirement to pay all fines and court costs ordered by the court upon each group member. All group members of the remaining modalities (two through six) had group one's sentence repeated for them and had one of five additional penalties imposed as well.

Participants of group two, the interlock group, were required to use an ignition interlock device on their vehicle for 180 days. Group three members were required to attend an impact panel discussion administered by the Mothers Against Drunk Drivers (MADD) organization. Group four members attended a different impact program sponsored by Methodist Hospital. Participants of group five were required to attend an alcohol treatment center. Individuals of the final group, group six, were required to perform 24 hours of community service. All of these groups had a unique penalty in addition to the same requirements imposed on the control group persons.

The project was to be of five-years' duration (1994–1999) taking into account the year of preparation in 1994. During the follow-up period, the Marion County Prosecutor's Office and Probation Department carefully monitored participants in the program. MCPO contracted with the Automotive Transportation Center (ATC) of Purdue University to analyze the data generated by the project. As a result, statistical reports were forwarded to the Automotive Transportation Center at Purdue University for processing and later analysis. By the close of the projected five-year period of the program, it became the responsibility of ATC to search driver and criminal record databases for indications of recidivism of persons covered by the scope of the program.¹⁰ Further, ATC was called upon to provide a detailed report on the program's findings. ATC's purpose was to examine the deterrent effect of each punishment or treatment modality to determine which, if any, of the participants had been re-arrested for OWI and note in which group or modality they had participated.

The details of the project, as described in the grant application, depicted how the study was intended and subsequently structured. The plan's intent was to study alternative sentences with the intention of determining which post-conviction program was the most effective. According to the application, "An effective sentence is one which produces few repeat offenders."¹¹ Later, the project application pointed out specifically that:

The purpose of this study is to evaluate the current process for handling OWI cases and to determine what sentences are most effective. Therefore, the study parallels the procedures currently in place in the Probation Department and the Prosecutor's Office. The results of the study will be used to evaluate, and if necessary change, these procedures, and to apply sentences that prove most effective in reducing drunk driving.¹²

¹⁰ MCPO Grant Application, pg 5.

¹¹ MCPO Grant Application, pg 1.

¹² MCPO Grant Application, pg 2.

The majority of A misdemeanor filings for impaired driving were heard in Marion County Superior Court 10 so this Court was identified as the Court in which the project's activities would be centered. To handle the additional effort required to prosecute the cases covered by the study, as well as record the statistics needed for later examination, the grant provided for the necessary funds to hire additional staff.

The Deputy Prosecutor selected for the study was provided some latitude in deciding which cases fell under the auspices of this study and which required more serious consideration due to exceptional circumstances of the particular case. In cases where the Deputy Prosecutor decided against including a particular case within the study, that officer was required to make note of the reasons for exclusion. As per the provisions of the study, however, the presiding judge of Superior Court 10 rendered the decision as to whether a particular offender was included in the study.

The process for screening participants of the program was also defined in the grant application. After a defendant had been found guilty, had received sentencing, and had been placed within a program group, the offender was assigned to a probation officer who met the offender in court at the conclusion of the court proceedings concerning the case. The probation officer was then required to collect information to help determine whether the offender was a social drinker or a substance abuser. The grant provided the funding for an additional probation officer during the first year of the study in order to cover these added responsibilities. Once evaluated, the program participant offender was placed into one of the six treatment modalities. The treatment modalities were designated T1 through T6 as follows:

- T1=treatment group 1. This modality reflected current practice and these participants were considered the control group. Participants of this group:
 - Were evaluated to determine whether they were social drinkers or substance abusers;
 - Were placed on probation for 365 days;
 - Had their licenses suspended for 30 days and restricted for an additional 180 days;
 - Were required to pay a \$200.00 alcohol counter-measure fee; and
 - Were required to pay fines and costs as ordered by the court.
- T2=treatment group 2. Participants in T2 were forced to adhere to all the requirements of T1, and in addition, they had to use an ignition interlock for 180 days.
- T3=treatment group 3. Participants in T3 were forced to adhere to all the requirements of T1. In addition, they were interviewed and heard presentations by a Victim Impact Panel sponsored by Mothers Against Drunk Driving (MADD).
- T4=treatment group 4. Participants in T4 were forced to adhere to all the requirements of T1 in addition to attending a Victim Impact Panel sponsored by Methodist Hospital.
- T5=treatment group 5. Participants in T5 were forced to adhere to all the requirements of T1. Additionally, they were referred for treatment to an alcohol

treatment center where they completed the prescribed treatment. (This was accomplished through contract with the appropriate agencies.)

- T6=treatment group 6. Participants in T6 were forced to adhere to all the requirements of T1, along with being required to perform 24 hours of community service.

In addition to tracking the participants' records for the duration of the study, the grant suggested an additional group for which records should be kept. The outline noted that in 1993, 20% of persons arrested for OWI were not charged due to a technicality; thus, this group would constitute a true control group and could serve as a source of comparison for the participant groups.¹³ The grant application also described the process to be used in the case of plea agreements, bench or jury trial convictions, and emphasized the importance of random procedures for assigning participants to the modality groups.

Implementation

The framers of the project in the Marion County Prosecutor's Office tried to anticipate the problems that could arise in the implementation of this plan, but not every contingency could be foreseen. As the project was conducted, all the participating agencies adhered to the procedures outlined but sometimes with difficulty. The study was put into practice beginning August 1, 1995, as the first of 587 program offenders convicted of OWI entered into the program. The MCPO had first contact with the offenders and carefully screened them for prospective participants. The prosecutor's office assigned three deputies to handle the cases that would be earmarked for the program. First time offenders were given the opportunity to participate in the program, but ultimately, their participation was voluntary. Although the prosecution could, and did, assign defendants to the program, many, when faced with the prospect of an undesirable program group made another choice. The choice, usually on advice of counsel, was to have their case tried in Court rather than participate in the program. As Ms. Lush explained, this practice began to crowd the Court dockets with trials that normally would have been plea-bargained and gradually began tying up staff.¹⁴ While this problem had been anticipated and identified in the grant application, the solution was elusive in actual practice.¹⁵ By the end of the program period, August 1996, fewer participants were assigned to the program than was either desired or thought to be needed.

Once participants for the program had been selected, the cases with signed plea agreements were presented to Judge Sallee—presiding judge of Marion County Superior Court 10. Judge Sallee then randomly matched each defendant with a program group and the process was completed in Court. Since the Judge's selections were totally random, individual characteristics of the defendants were not considered.

While this process was consistent with the project plan, unforeseen problems did occasionally arise. For example, in one case, someone assigned to the interlock group would later be found to always ride the bus. The person's arrest for OWI, it was discovered, was one of those rare occasions when the individual actually got behind the wheel of a car. Another case was a person selected randomly for the community service group who was physically disabled. In this instance, the person was unable to perform community service. Although these problems were infrequent,

¹³ MCPO has provided ATC with a separate list of non-participant names to be analyzed and reported in future supplementary reports.

¹⁴ Lush, interview.

¹⁵ MCPO Grant Application, 5.

they did cause additional problems that later had to be corrected by the Marion County Probation Department and the Court.

After assignments had been randomly made, they were sent to the Marion County Probation Department. Upon receipt, Probation Officer Joe Trice carefully screened each participant to determine if the occurrence of OWI for which they had been charged was an infrequent occurrence or if the charge was a manifestation of a substance dependency. This process was carefully conducted and involved administering a questionnaire and sometimes several interviews with the participants. The officers looked for indications of habitual use of alcohol or drugs to determine the probationer's attitude toward substance abuse. From the information thus gleaned, the officers decided how best to provide additional help, if any, to the participant. On occasion, the officers found participants assigned to a program for which they were wholly unsuited. In those cases, it was then necessary for the Probation Department to request permission from Judge Sallee to make adjustments. From here, the Probation Department made arrangements and monitored the participant's involvement in the programs as assigned by the Court.

From interviews with Probation Department staff, important characteristics of the six groups, or modalities, can be identified.¹⁶ Each program was different and managed by the program sponsors but MC Probation Department officers coordinated all activity of individuals outside the program. This included the probation requirements beyond the assigned programs of all program participants.

- Group 1, Control Group, was the first group and was sentenced as described by the grant application. The fine, suspension, and probation period were the same for all groups. Group 1, however, suffered only those consequences for the OWI conviction agreed upon between the defendants and the MCPO according to program guidelines. They were processed and monitored while on probation but had no other penalties.
- Group 2 was processed in the same manner as group one. The same intake questionnaires were administered by the Probation Officers who further made arrangements with the company that installed and removed the ignition interlock from the group participant's personal vehicle. The interlock was a device that was installed onto the ignition switching system of the participant's vehicle. One such device was called the 'Intoxalock,' which was marketed by Consumer Safety Technology, Inc. of Des Moines, IA. The device had a breath intake tube, much like an alcohol breath testing device such as a Breathalyzer or Intoxilyzer, and included a read out and an electric interrupt attached to the ignition system on the vehicle. To be able to start the vehicle equipped with an ignition interlock, the participant had to blow into the intake tube. If the device detected any alcohol in the driver's breath, the interlock prevented the ignition switch from starting the vehicle. Cost to the program participant amounted to about \$475.00 for use of the device for six months as prescribed by the program guidelines.

Of the groups discussed in the Prosecutor's Office and the Probation Office, this group was thought to be the least successful. Officer Trice commented that he believed the device was easily circumvented and believed that many probationers may have done so. There was no mechanism for identifying the person blowing into the device and a potentially intoxicated driver could get around the device by simply having a sober

¹⁶ Farmer, Debra A. (Supervisor Alcohol/Drug Services), Trice, Joe Jr. (Field Services Coordinator), and Walker, George W. (Chief Probation Officer), Marion County Probation Department Officers' Interview with ATC. October 27 and November 3, 1999.

friend, relative, or even a child, blow into the device to start the car. Once started, the intoxicated probationer could simply take over control of the then running vehicle and drive away—either with the sober friend/companion or alone. An even easier way of getting around the interlock device was for the program participant to drive another car not equipped with the device. This could have been either their own or a borrowed vehicle belonging to a friend or relative. Most interviewees agreed that until some instrument was included with the interlock that could positively identify the potential driver/probationer, the interlock would remain less than reliable as a drunk driving deterrent.

- Group 3, the MADD Victim Impact Panel, involved no mechanical devices but relied on the shock value of stories related to groups of convicted OWI persons by victims of drunk drivers. (MADD is a non-profit organization founded by Cindy Leitner of San Diego, California.) The program is frequently used by the MCPO as an attempt to demonstrate to convicted OWI offenders where the driving misbehavior of intoxicated persons can lead and the grief it causes. In this program, the group participants were required to attend a session where the main speakers were victims of crashes (usually fatal crashes) caused by drivers under the influence of alcohol. Marie Gregor-Smith, current president of the Indiana Central Chapter of Mothers Against Drunk Driving, explained that participants of the program were scheduled for a Victim Impact Panel session after her staff had been contacted by the Marion County Probation Department concerning the program participant.¹⁷ Monitoring and recording the presence of the assigned participant member was carefully done requiring the attendee to sign in and be sober. To insure sobriety, volunteer police officers attend each session and administer a portable breath test (PBT) to each court-mandated attendee. Ms. Gregor-Smith emphasized that there were no exceptions to this procedure and that any breach of this requirement resulted in the assigned attendee's denial of admittance to the program and a report being forwarded to the Marion County Probation Department. Such a violation of procedure was considered a violation of probation that resulted in termination from the program and included jail time as a consequence. In addition, the identity of the program participant was carefully inspected by police officers present, MADD staff, and occasionally, by an attending probation officer. Ms. Farmer explained that she made it a practice to attend any MADD session in which she had assigned probationers scheduled to attend and that a substitute person attending a session in lieu of the assigned probationer was rare if ever.

The program lasted little more than an hour, then as now, and was normally made up of three or four speakers who related past trauma at the hands of a drunk driver. The resulting program was an intense emotional experience and was so described by the probation officers who attended sessions in the past. At the conclusion of the session, the attendees left the program with an expanded understanding of the consequences to innocent parties because of the actions of intoxicated drivers. Some, according to Ms. Gregor-Smith, have sent letters, called their staff, or have personally thanked MADD staff members for the “eye-opening”¹⁸ experience and professed abstinence from drinking and driving in the future.

¹⁷ Gregor-Smith, Marie (President, Indiana Central Chapter, Mothers Against Drunk Driving), October 29, 1999.

¹⁸ Gregor-Smith, Interview.

The program was, and is, free to the public but probationers required by the Court or Probation Department to attend were mandated to pay \$30.00. MADD program staff are not paid and any revenue collected as a result of the program, or donations, is used to buy alcohol enforcement equipment for police departments in their area. The PBT alone costs close to \$400.00 and are supplied to police departments for the asking.

- The Methodist program, as described in the grant application, gave the appearance of being like the MADD program because it was described as being a ‘Victim Impact Panel’ “sponsored”¹⁹ by Methodist Hospital. In reality, the two programs were very different. The Methodist program (called ‘Impact’) required the participant to commit to an eight-hour workday to attend the program. Probation Department monitoring of required attendance by assigned program members was rigid, as in the previous programs, but Indianapolis Methodist Hospital administered the structure of the program. In this program, the attendee was guided through the Hospital trauma center and was required to observe accident victims being treated. Also, when appropriate, the attendee was taken to the hospital morgue to view victims of fatal crashes. In addition, the attendee heard experiences of people who had been victims of intoxicated drivers as well as observed hospital staff rendering emergency aid to victims of crashes that had just occurred. The program observations and discussions lasted all day with this program and was described by probation officers as intense. Cost to the participants of the program was \$75.00, but as Officer Joe Trice explained, Methodist Hospital was flexible about payment. Usually the cost was assessed at the time of participation in the program but if Methodist Hospital found the person to be indigent, they waived the cost.
- The fifth program group, the treatment group, differed greatly from the groups previously described. The treatment programs varied considerably with the choice of specific treatment program hinging on the participant’s needs indicated by the answers given on the intake questionnaire. In the other groups, the Probation Department Officers had little latitude in assigning probationers to the programs. In the field of alcohol treatment, however, the Probation Department had a variety of vendors to which they could send probationers. The probation officers reviewed the questionnaires, histories, and social environments of participants of this program group and decided, based on these very individual reviews, the best treatment program for the participant. Selection of the program was carefully done to provide the probationer maximum benefit with the least inconvenience for that person. Many vendors, all of which specialize in alcohol treatment, have multiple locations throughout Indianapolis and sites were selected, in many cases, close to the participant’s residence. Also, although the participant may have been a first time OWI offender, he or she may have attended a treatment program previous to the charge that brought them to court. In such cases, as Ms. Farmer explained, it made little sense to send a person to a program which history had demonstrated failed to solve the person’s drinking problem.

Treatment programs varied in length from one to several days over a period as much as six months in length. Like the interlock program, participation could cost up to \$400.00, although it was usually less. The programs incorporated a large education component along with counseling that was adjusted to the participant’s perceived needs. Success of the program depended largely on the offender’s willingness to participate in the program to which he or she was assigned. In the event of a relapse, the intensity of the program could be ratcheted up along with requiring participation in Alcoholics Anonymous (AA).

¹⁹ MCPO, Grant Application, pg 5.

- Group six was sentenced to 24 hours of community service in addition to the basic sentence given all groups. This program involved participant assignment to one of many non-profit community service organizations in Marion County. The work was manual labor in most cases and included anything from clerical work to yard cleaning or maintenance. The probation officers used the questionnaires to examine work experience and skills and attempted to assign the participants to organizations or government agencies to which the participant's skills and experiences would prove valuable. Program participants were not assigned to tasks to which they were not suited or where the work would be beyond the participant's ability to perform.

The organizations to which community service program participants were assigned were part of a list that currently contains 87 non-profit agencies. Non-profit status is a requirement for an organization to be included in the Probation Department list of approved Community Service Work sites. The list includes a wide variety of non-profit organizations ranging from the American Red Cross to the White River State Park. Probation officers explained that the list has changed little in the last five years and like the treatment group, participants were sent to a wide variety of work providers depending on individual needs and availability of work suited to the participant. The work could be done in time blocks from four to eight hours and was repeated until 24 hours of work had been performed. The work was supervised by the organization but, as in the other programs, probation officers monitored attendance very closely. There was no additional cost—except in time—to the participant for this program.

Throughout 1995 and 1996, the Marion County Prosecutor's Office and the Marion County Probation Department continued to add offenders to the programs according to the plan. Judge Sallee of Superior Court 10 randomly selected the participants to be assigned to one of the six modalities and Probation Officer Joe Trice then evaluated each participant. Officer Trice subsequently assigned a probation officer who regulated and monitored the probationer's progress in his or her assigned program.

Although the agencies involved in the program worked well together, the program still encountered problems. As the Marion County Prosecutor's Office 1996 report notes, the number of participants placed into the program was "...less than what one would have expected considering that there are approximately 3,900 first offenders a year."²⁰ One major factor was as described previously by Ms. Lush. When what was regarded as the high cost of certain components of the program were known to some offenders, they decided to have their cases tried in open court rather than risk the expense of some of the punishments imposed within the study. Another, perhaps more significant factor, was the realization that many of the first-time offenders being sent to Superior Court 10 were found to have substantial criminal histories that made the fairly minimal punishments of the program seem inappropriate. Nonetheless, although the number of participants was less than anticipated, the report indicated that the number placed in the program was expected to be sufficient to yield conclusions and recommendations.

By December 1998, MCPO had collected and sent to ATC all reports pertaining to the project and had compiled a list of 587 participants assigned to the modality groups. By utilizing the services of Access Indiana, ATC was able to retrieve all but 24 driving records of the 587 (563 or 96% had records of the Marion County convictions—4% did not) program participants from the BMV database. Additionally, MCPO supplied ATC with a list of non-participants in the program

²⁰ MCPO 1996 Annual Report on the Study of Alternative Sentences for Impaired Drivers, 2.

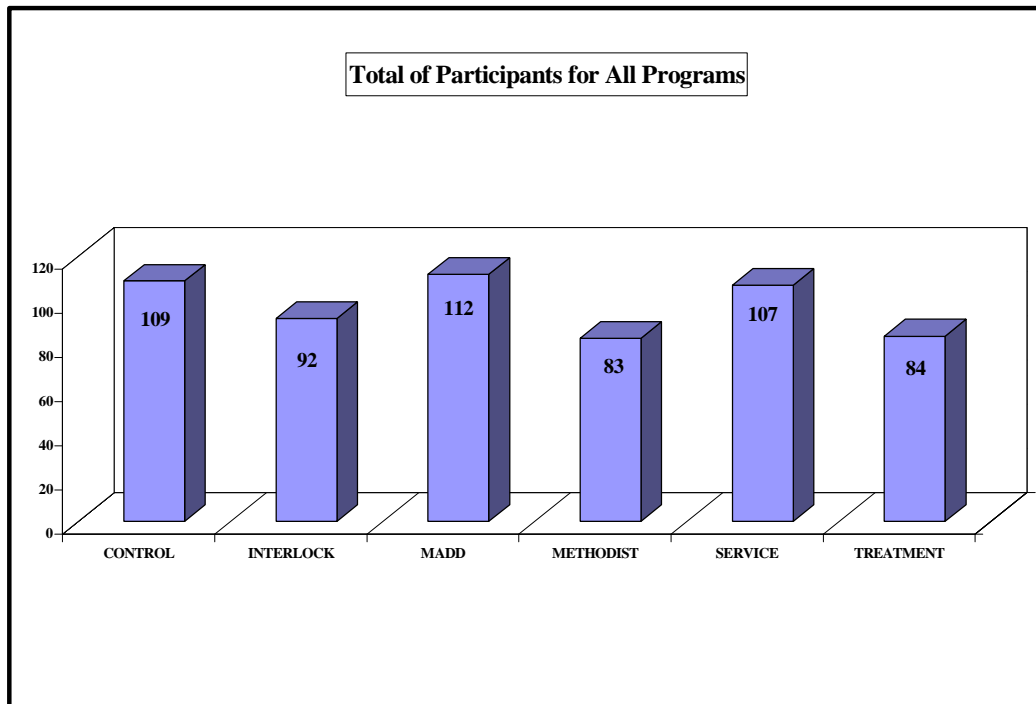
who were also arrested and charged with OWI in Superior Court 10 during the same program period of August 1995 to August 1996. This second list was quite extensive and contained about 4,400 names charged with no less than 12,000 OWI and associated driving offenses. The second list, which also contained valuable OWI offender data, is currently being evaluated with a planned supplementary report scheduled for later issuance.

A breakdown of how the 587 offenders were grouped and the dates they were placed into a program can be seen using the following table:

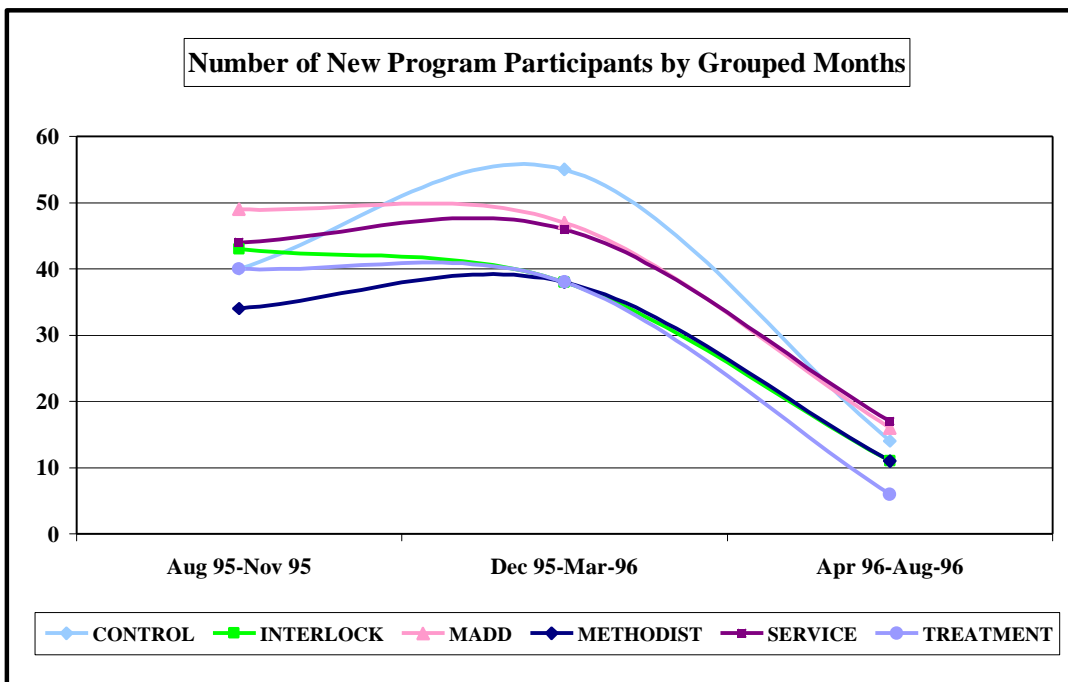
Table of Dates and Entry to Groups

MONTH	CONTROL	INTERLOCK	MADD	METHODIST	SERVICE	TREATMENT	TOTALS
Aug-95	9	10	6	8	9	5	47
Sep-95	12	10	20	6	13	12	73
Oct-95	9	8	12	9	9	11	58
Nov-95	10	15	11	11	13	12	72
Dec-95	18	16	8	11	14	8	75
Jan-96	12	8	9	16	18	11	74
Feb-96	15	4	15	3	7	11	55
Mar-96	10	10	15	8	7	8	58
Apr-96	4	3	5	4	5	1	22
May-96	2	3	6	6	8	1	26
Jun-96	6	3	0	1	2	1	13
Jul-96	1	2	5	0	1	3	12
Aug-96	1	0	0	0	1	0	2
Totals	109	92	112	83	107	84	587

Graphically, the data totals for each group presents itself thus:



The total number of offenders put into each program varied somewhat with the two similar types of programs receiving both the most number of participants and the least. The MADD victim impact panel received the most participants while the Methodist Hospital victim impact panel received the least. It is apparent, however, that MCPO succeeded in balancing the program participant numbers, as far as was possible, throughout the six modalities.



Balancing the size of the groups was important to provide each modality with a similar sampling to make comparisons valid. Apart from group size, there are other comparisons that can be made. Of the 587 persons participating in this study only 65 were re-arrested for OWI between the end of the program period, August 1996, and September 1999 according to BMV files. This represents only 11% of the total, but another 4%, or 21 names submitted to BMV, show no record for the offense that caused them to be placed in the Marion County project. There were potentially more arrests, but ATC was unable to confirm this or put these names into that category. Of those whose OWI arrest records were retrieved from BMV databanks, however, the breakdown can be shown on the following table:

Arrest Percentages by Group

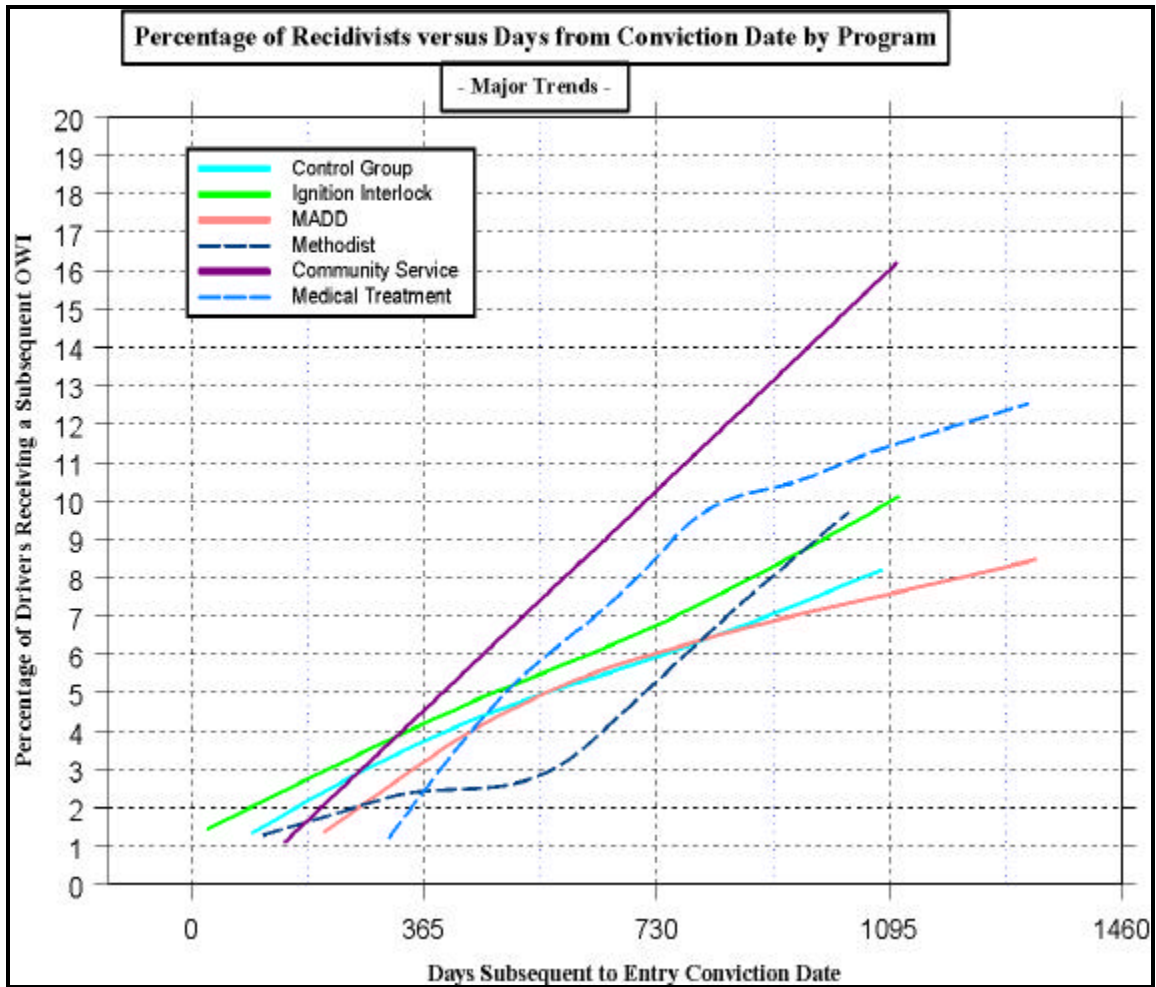
Modality	<u>Pre-Arrests</u>		<u>1 Re-Arrest</u>		<u>2 Re-Arrests</u>		<u>Other States</u>	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Control Group	0	0.0%	9	13.9%	0	0.0%	0	0.0%
Ignition Interlock	0	0.0%	13	20.0%	0	0.0%	0	0.0%
MADD	1	33.3%	8	12.3%	2	20.0%	1	33.3%
Methodist Hospital	0	0.0%	8	12.3%	2	20.0%	0	0.0%
Community Service	1	33.3%	16	24.6%	2	20.0%	1	33.3%
Treatment Program	1	33.3%	11	16.9%	4	40.0%	1	33.3%
Totals	3	100.0%	65	100.0%	10	100.0%	3	100.0%

The above table shows columns listing the number of arrests of participating individuals before entering the various programs, having had one arrest after participation in a program, and having had two arrests following participation in a program. Please note, however, that the percentages shown are the percentages of the total group for the column and do not represent the percentage of the participants in the particular modality. Only one person had three arrests on his BMV file but one of those was an arrest before program entry. The last column represents the number of alcohol-related arrests in states other than Indiana following the offender's participation in the Marion County study.

Of the 587 names searched in BMV files, 10 returned as having had drug charges as well as OWI, or very nearly 2%. Another 10 names had changed since the persons had been involved in the Marion County project. These latter 10 names were apparently all females and were probably due to changes in their marital status rather than for purposes of confounding searches for information on them. Nevertheless, these factors raise the question of how much OWI recidivism is masked by OWI offenders also using drugs or having their names changed for whatever reason.

Analysis

As previously noted, the search of BMV files yielded 65, (or 11%, of program participants) who had been re-arrested after their participation in this study. ATC ran data queries to obtain trends based upon gender, age, race, occupation, and income level. The data failed to lead to many conclusions regarding the characteristics of the make-up of the program participants due to the small sample size of the sub-sets. Several trends regarding the effectiveness of the various programs were possible to detect.



The preceding chart shows trends over time. Time (in number of days) is represented along the bottom while the left represents the percentage of members of the indicated modalities who had been re-arrested after entry into the program for OWI. Following the almost straight line for the Community Service group, for example, the chart indicates that participants of this group were fourth to be arrested subsequent to the program. Following the line, however, indicates a higher percent of OWI re-arrests as the line intersects the vertical indicating one-year (365 days). Continuing along the line further indicates that at the three-year vertical (1,095 days), this group shows the highest percentage of recidivist offenders. In the first year, up to 365 days on the chart, the Methodist and Treatment groups have the lowest number of members who were not re-arrested for OWI. As the end of the second year approached, the percentages changed as the differences between the groups seemed to widen. Here, the Methodist and Control groups indicated the lowest percentage of members who had been re-arrested while the Service and Treatment groups showed the highest numbers of persons who had been re-arrested.

By the end of the third year, the trends shown indicated that the least successful of the group members at avoiding re-arrest were those in the Community Service group, while the number of persons who had undergone medical treatment was somewhat lower for post-program re-arrest. During this same time, the MADD and Control groups had the least number of re-arrests while the Methodist and Interlock groups fell somewhere in between. Other charts give a slightly different picture.

A closer look at the chart reveals that two distinctive clusters of trends emerge, based upon the rate of recidivism. These clusters are divided accordingly:

- a) Methodist, Community Service, Medical or Alcohol Treatment
- b) Control, Ignition Interlock, MADD

Cluster (a) represents a faster rate of recidivism than cluster (b). It should be noted that the three programs just present short-term differences as to when the recidivism process begins.

Specifically for cluster (a): Methodist, Community Service, and Medical Treatment

- 1) Community Service was by far the least effective in deterring repeat OWI offenses;
- 2) Medical Treatment, although the last to recidivate at just short of the one-year mark, the rate of recidivism was rather significant once it began. This is indicated by the rate of climb of the number of people from these groups experiencing new OWI arrests.
- 3) The Methodist program had 2.5% of its participants recidivating after one year, which when compared to the other five groups was one of the lowest rates at the one-year interval. However, by year two and year three, its rate had more than doubled from the previous year, respectively.

Cluster (b): Control, Ignition interlock, and MADD

- 1) For practical purposes, the three groups in this cluster show the same overall efficacy, or lack thereof, due to the Control Group.
- 2) Ignition Interlock, as the program was implemented during the study, was very deficient in deterring recidivism as it started approximately three weeks later and grew at a steady rate afterward.

Short-term observations (less than one year):

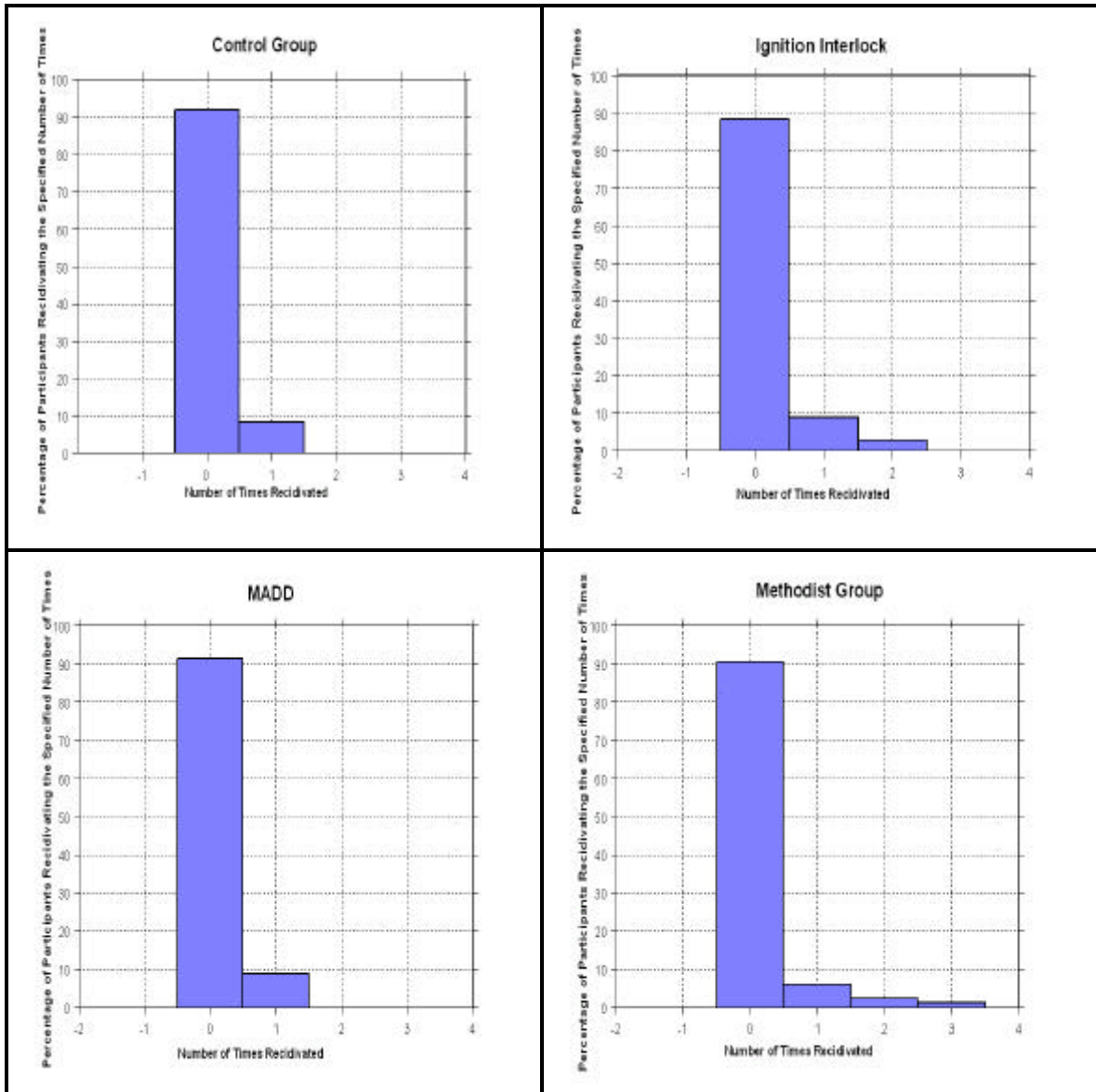
The Medical Treatment program was the most effective at deterring recidivism, up to one-year post-entry into the program. This indicates that continued regular monitoring sessions could be beneficial in reducing the recidivism rate for these participants. The Ignition Interlock group was the least effective as participants began recidivating almost immediately after entry into the program.

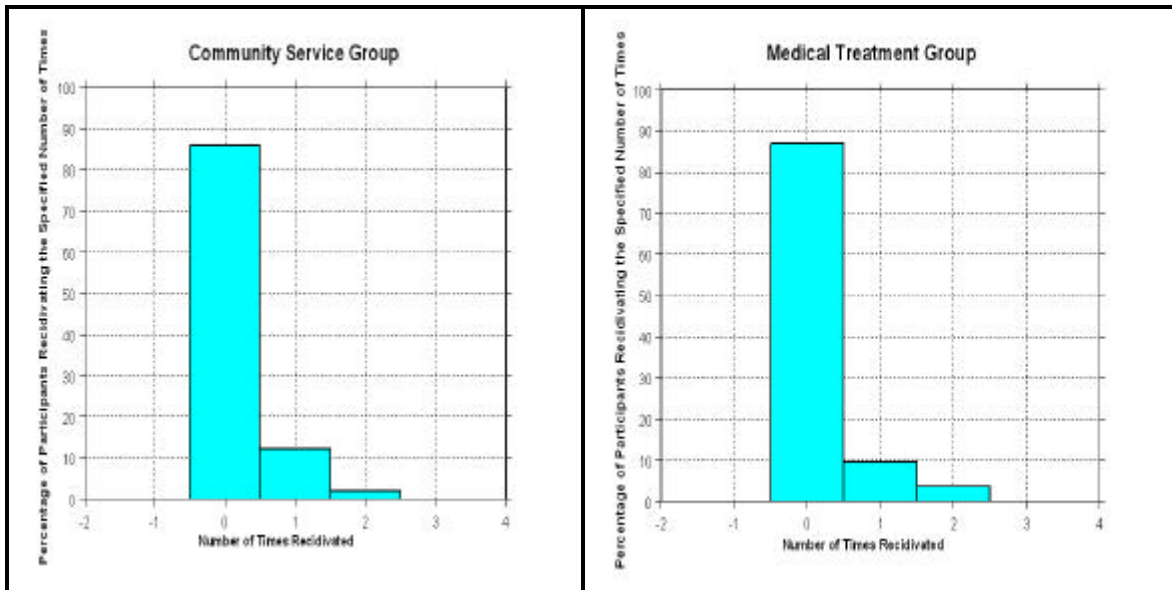
Long-term observations (one to four year):

The MADD program was the most effective overall at deterring recidivism over the three-year post-program entry period, while the Community Service participants experienced the highest recidivism rate of any of the groups.

In this series of charts, the percentage of each group recidivating is shown. The largest columns on all the following charts represent the people who were **NOT** re-arrested for OWI. The second column represents the number of people in the represented group who were arrested once while the third column on four of the six charts show the number of program participants who were arrested twice subsequent to their program involvement. In two of the groups represented below, some participants were arrested more than twice for OWI and these are represented by the additional columns. The most successful programs, therefore, are illustrated by the highest

number of “0” re-arrests (first column) for OWI on the charts below. In the case of the control group, more than 90% of members showed no record of having been re-arrested after program participation for OWI. Slightly less than 10%, conversely, were re-arrested for OWI on at least one occasion.





The Ignition Interlock group not only indicated a higher percentage of re-arrests in some cases, members were charged with OWI on more than one occasion following the program. Members of the MADD modality indicated a pattern similar to that of the Control Group. The Methodist participants also revealed similarities to the Control and MADD groups while the Ignition Interlock, Service, and Treatment groups displayed the highest indicators of recidivism.

While all of the above trends are visible,²¹ the group is simply too small to draw significant conclusions. It might have been suspected that the Control group would have turned in the poorest performance, but in the end, it seems to have shown an indication of being on par with the other groups. Moreover, it did not have as poor a showing in terms of recidivism as some of the other groups, such as the Ignition Interlock and Service groups.

It is clear that further research similar to that of the *Marion County Study of Alternative Sentences for Impaired Drivers* needs to be undertaken. While this study is a first step, more needs to be done to carefully examine the nature of recidivist offenders. It is apparent that far too many drinking drivers enter into and out of the judicial system, and they clearly represent one of the foremost hazards to the motoring public. In addition, if the Marion County experience is typical of other Indiana counties, the very high cost of prosecuting nearly 30% of OWI cases must be borne over and over again. This study does provide some insight into the nature of recidivism, but there are still many questions to be pursued. With that in mind, ATC offers several recommendations for pursuing this topic further.

Recommendations

- The focus of this study, as outlined in the grant application to the Governor's Council on Impaired and Dangerous Driving, was to examine the recidivist behavior of first-time offenders. This group, due to a myriad of mitigating factors, finally resulted in a group of only 587 offenders out of nearly 5,000 persons arrested for OWI for the same period. It would be ATC's recommendation that for future studies, the criteria be expanded to include

²¹ See Appendices for full page charts and graph.

more drivers in the study. It might be worthwhile, for example, to include first-time driving offenders who might also have criminal records. As an MCPO Status Report pointed out, first-time offenders with criminal records were excluded due to the relatively mild punishment given group members which seemed less than was appropriate for the more serious criminal backgrounds. It might be worth considering imposing two levels of punishment in a similar study to allow a separate level of punishment for both first-time driving offender groups—a level of punishment commensurate with each group. This would have the effect of expanding the group to provide an enlarged demographic sampling to be examined.

- Revise the study to focus specifically on teen drivers (under 21 years old) charged with OWI to determine whether early intervention does or can have an impact on their likelihood for recidivism. Compare the new studies' findings with prior driver histories to determine what effect, if any, the graduated licensing law may be having on teen driver behavior and alcohol-related offenses.
- One large source of data that seems to be frequently overlooked in studies of this nature is the Indiana Department of Toxicology. In future studies dealing with recidivism, it would be the recommendation of ATC that information from this source be compared with driver histories garnered from more frequently used sources. The Department of Toxicology maintains records of breath tests in the field and it is the belief of ATC that a comparison of this information with arrest and conviction histories might offer a more complete picture of a recidivist's drinking and driving behavior. As mentioned in the grant proposal for this project, some 20% of persons arrested for OWI are not prosecuted due to technical reasons. These statistics are not maintained in a central repository but are kept in the local jurisdiction's data collections. Department of Toxicology files might provide clues about the numbers of motorists who are arrested but whose arrest records never make it to BMV.
- ATC noticed, while examining the non-participant offender list, that there seemed to be a number of commercial driver's license holders in the mix. Commercial drivers and their behavioral impact has attracted more notice in recent years and is a topic that the U.S. Department of Transportation has urged states to look at more closely. It would be the recommendation of ATC that this list, and other records of drivers charged in Marion County Courts, be examined to discover the degree to which holders of Commercial Driver's Licenses (CDL) are becoming cited for OWI. It seems obvious that intoxicated CDL holders, like any type of license holder, would be a serious problem under any circumstances, but behind the wheel of a vehicle of great size and weight, the problem could be magnified many times. This appears to be a problem that could be examined effectively through the kinds of lists compiled for this study.

In conclusion, the work done so far to provide the answers sought by the Marion County Prosecutor's Office was worthwhile. Although the findings were not as extensive or as conclusive as had been intended when the project began, the effort was nevertheless worthwhile. The experience gained and the data collected continues to accumulate and it is hoped that this project has laid the foundation for future, more comprehensive, studies and has provided at least some of the insights into OWI recidivism sought by MCPO.

Continuing Plan

ATC recognizes that the small sampling of participants in the Alternative Sentencing Study make firm conclusions difficult. In an effort to enhance the study, therefore, ATC plans two additional steps followed by appropriate reporting to supplement this study. Those steps:

- Annually query BMV records for the next three years for any signs of recidivism on the part of the 587 participants identified in this study.
- Further analyze, and report to MCPO, the results of the 4,471 drivers who were arrested for OWI during the period of this study who were not included in the program.

ATC hopes that this additional effort will enhance and constructively supplement the findings contained in this report.